

PLANNING COMMISSION
January 29, 2026

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Thursday, January 29, 2026**, beginning at 10:00 a.m.

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

ROLL CALL by Jessica McKinney

PLANNING COMMISSION MEMBERS

Joe Scarpelli, Chair	Present
Ron Demes, Vice Chair	Present
George Neugent, Commissioner	Present
Eric Anderson, Commissioner	Present
Rosemary Thomas, Commissioner	Present
Douglas Pryor, Ex-Officio Member (MCSD)	Absent
Christina Gardner, Ex-Officio Member (NASKW)	Present

STAFF

Devin Tolpin, Senior Director of Planning and Environmental Resources
Mike Roberts, Assistant Director of Environmental Resources
Thomas Francis-Siburg, Acting Development Review Manager
Liz Lustberg, Senior Planner
Barbara Powell, Planning Policy Advisor
Peter Morris, Assistant County Attorney
Hunter O'Connor, Planning Commission Counsel
Jessica McKinney, Senior Planning Commission Coordinator

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

County Resolution 131-92 was read into the record by Mr. Hunter O'Connor.

SWEARING OF COUNTY STAFF

County staff members and public attendees were sworn in by Mr. Hunter O'Connor.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Jessica McKinney confirmed receipt of all necessary paperwork, noting additional documents which had been submitted this morning.

CHANGES TO THE AGENDA

A motion was required to admit the additional paperwork for Item 1. Commissioner Demes wanted it noted that he had not had an opportunity to review them.

Motion: Commissioner Thomas made a motion to include the late submittals. Commissioner Anderson seconded the motion. There was no opposition. Motion passed unanimously.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Commissioner Demes stated that he had responded to emails regarding item number 5 indicating he could not meet with the individual. Regarding item number 1 he'd had a call from Mr. Bart Smith and had received letters which he believed the other Commissioners also received. These encounters will have no impact on his decisions.

Commissioner Thomas stated that she had also received emails, had read them, did not respond, and it will not impact her decisions.

Commissioner Anderson stated that he'd also had conversations with Mr. Bart Smith and Commissioner Holly Raschein regarding item 1, and neither conversation would impact his decisions.

Commissioner Neugent stated that he'd had conversations with County staff on item number 2. He also spoke with Mr. Bart Smith regarding item number 1. None of these conversations will impact his decisions.

Chair Scarpelli stated that he had spoken with Mr. Bart Smith and Ms. Barbara Mitchell regarding item number 1. He had spoken with Mr. Trent Claybaugh on item number 5 and reviewed plans. None of these conversations will affect his decisions.

Mr. Peter Morris, Assistant County Attorney, noted that conversations with staff would not constitute ex parte communications. However, in an abundance of caution, staff had provided a baseline briefing for each item to the Commissioners.

APPROVAL OF MINUTES

Commissioner Demes made a correction to page 9, line 2 of the minutes, changing the word "palms" to "pines" as the statement he had made had been to "save the pines."

Motion: Commissioner Neugent made a motion to approve the December 17, 2025, meeting minutes. Commissioner Anderson seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

AGENDA ITEMS

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY FUTURE LAND USE MAP DESIGNATION FROM INSTITUTIONAL (INS) TO MIXED USE / COMMERCIAL (MC), FOR ELEVEN (11) PARCELS OF LAND, DESCRIBED AS LOTS 7 THROUGH 12, AND LOTS 40 THROUGH 46, BLOCK 14, LAKE SURPRISE ESTATES SUBDIVISION, KEY LARGO, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBERS 00537590-000000, 00537600-

000000, 00537610-000000, 00537620-000000, 00537630-000000, 00537640-000000, 00537980-000000, 00537960-000000, 00537940-000000, 00537930-000000, AND 00537920-000000 AS PROPOSED BY DOHERTY ROBERT M REV TRUST 02/03/2021 AND DOHERTY YVETTE REV TRUST 02/03/2021; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE FUTURE LAND USE MAP DESIGNATION (FLUM) MAP; PROVIDING FOR AN EFFECTIVE DATE. (FILE NO. 2022-163)

(10:09 a.m.) Ms. Liz Lustberg, Senior Planner, presented the staff report. This is a request to change the land use designation from institutional to commercial. A site map was presented to show the location between Largo Road and U.S. 1, showing an institutional use, two residences, and the undeveloped parcels. Another site map was presented to show what the map would look like if these properties were amended to mixed use commercial. A chart was presented to show the differences in potential development between institutional and mixed use commercial. Ms. Lustberg pointed out how the FLUM and zoning map interacted with each other. Normally, the FLUM aligns with a certain set of zoning designations. Then, assuming everything is in alignment, all of the uses allowed in that zoning can be done if all requirements are met. In the institutional FLUM there is no set grouping of zonings that align with it. Institutional FLUM can align with pretty much any zoning and limits the allowed uses in that zoning to the institutional use and to the .3 floor area ratio. The institutional FLUM does not allow for permanent residential density or dwelling units. It does allow for transient and non-residential floor area, whereas mixed use commercial FLUM allows for permanent dwelling units, affordable dwelling units, transient dwelling units and non-residential floor area. The maximum allocated residential density is nine, calculated based on the maximum residential density allowed in the FLUM.

Land Development Code Section 102-158 lays out the requirements and process to have a map designation change. The BOCC can decide to change the FLUM based on seven criteria. The applicant has submitted analysis for compliance with all except for number six, the data updates. Ms. Lustberg presented a list of other items that must be in compliance for approval of the FLUM designation. The item at issue is Comp Plan Policy 101.5.26. The key point is the private application requesting FLUM amendments received after 2012, which propose that increases in allocated residential density shall be required, upon amendment approval, to comply with option one or two laid out in the code. Option one involves dedicating certain qualified land to the County. Option two also addresses dedicating land to the County, the idea being that Monroe County is not allowed to increase density overall throughout the County and if a map change increases density in one area, then density of equal or greater amount must be reduced elsewhere in the County. To address this, the applicants offered to put a deed restriction on the property saying the two existing dwelling units can remain and there will be no additional density on the property. Two key pieces to be clear on, putting a deed restriction on the property for which the map amendment is proposed is neither of the two options listed as allowed in the code. Currently, the allocated density is zero as the density that exists is lawfully nonconforming. Proposing a deed restriction allowing for more density than allowed under the current FLUM would be increasing density. The applicant has not proposed mitigation that complies with the requirements of 101.5.26, so the proposed future land use amendment is not in compliance or consistent with the requirements of the comprehensive plan. Staff is

recommending denial of the proposed FLUM amendment from institutional to mixed use commercial for these properties as proposed due to the inconsistency with Policy 101.5.26.

Chair Scarpelli asked if the Commission had any questions. There were none. Chair Scarpelli confirmed that the Commission was making a recommendation to the BOCC, and asked what would be the typical FLUM for suburban commercial LUD. Ms. Lustburg responded that it aligns with the mixed use commercial FLUM designation and no others. Ms. Devin Tolpin, Senior Director of Planning and Environmental Resources, added that the current institutional FLUM can be applied to any zoning. There is no directly corresponding zoning district. Chair Scarpelli asked if suburban commercial could also go to commercial one or two, and Ms. Lustburg responded that it could not, that those would align with a different FLUM designation. Ms. Tolpin stated that that would be the commercial FLUM designation. Ms. Lustberg explained that they allow for similar uses minus the residential use. Chair Scarpelli then asked if the applicant wished to speak.

Mr. Bart Smith, representing the applicant, thanked the Commission for accepting the letters this morning and allowing them into the record. This is advisory to the BOCC so there will be sufficient time for them to review them. The Doherty's acquired this property and have been working very hard with the neighbors to try to assuage any of the concerns that have arisen over prior looks at what the property could do. They have looked to confine what could be on this property once this is approved. This area has suburban commercial all along U.S. 1 but there is residential behind it. They are not looking at things that have a significant increase in density or intensity and only want to change the FLUM from institutional to suburban commercial. The first letter is from the pastor of the Beach Church which was the former owner of the property who explains that they were not even aware that in 1997 the FLUM map was placed on the property that required them to be a not-for-profit or federally tax exempt entity that utilized the facility. They would not have agreed to that, and only found out about it in 2021 when they put the property up for sale, which Ms. Tolpin had remembered. Another letter from Jane E. Corbett had signed a petition objecting to the zoning change before, but after having met with the owners talked about what their goals are for the property, is rescinding her objection and putting her support behind this amendment. Mr. Chris Colarusso, a businessperson in the Upper Keys, is also supporting this amendment so the Doherty's can bring about what should be a benefit to the community. David Daniel Zimmerman also met with the Doherty's, who will continue to meet with anyone who has a concern to hopefully garner everyone's support for a FLUM amendment that allows the use of the property because it's completely nonconforming to everything.

This property is right on U.S. 1 before the 18-mile stretch. It has historically been used as a church but has always had two residential dwelling units on two separate platted lots that have always been residential but were included in the institutional district which does not have any density. The property itself was originally BU-2, medium business district, but when the current code was adopted the entire area was amended to suburban commercial, which is small businesses with residential mixed into it. Institutional is a permitted use in suburban commercial. Before there was a FLUM map, everything was permitted as it existed before 1986 and continued to exist. Then the property operates as it historically has, and in 1997 the County adopted the FLUMs and because they were adopted countywide, individual notices were not sent out. So you have a church and two residential units continuing to be utilized as they are and the

two residential units become nonconforming. The church decides to move and needs to convey the property and at that point they find out that they have this issue which makes it very difficult for them to sell it. The Doherty's see that it's a good place, zoned suburban commercial and is appropriate for a light use that meshes in with the area, and that the two residential units should remain.

The key is that the institutional FLUM only permits institutional uses by federally tax-exempt not-for-profit facilities. The Doherty's are business people and not tax exempt, nor are the two residential units, so everything is nonconforming and it needs to have its FLUM changed. These are errors and they need an appropriate category, so they need suburban commercial and the appropriate zoning is mixed use commercial as the logical choice to make it conforming. There were a lot of objections and concerns from neighbors. The decision was that the commercial C1 and C2. The potential it could bring was more concerning to the neighbors than what was there in the surrounding area which is to keep it suburban commercial under mixed use commercial. To bring the property into full conformity, because it has two ROGO exempt units, the most logical, reasonable and lowest intensity amendment would be mixed use commercial to keep the suburban commercial in place. It allows the property be conforming to residential and commercial. Going the other route which is the FLUM to commercial and C1, the residential units are still nonconforming. That is the concern and why the applicant believes this is the most appropriate designation.

A comprehensive plan policy is brought up as the reason staff states this is inconsistent with the comp plan. It provides that private applications requesting FLUM designation amendments received after the effective date of this ordinance which propose increases in allocated residential density shall be required, upon amendment approval, to comply with the following: And there are two different options. The intent in this proposal is the applicant will provide a signed writ of restrictive covenant to be recorded before approval. The hope is that that does not propose an increase as it will be restricted to what is there now so there cannot be any additional density. Mr. Smith believes this is logically how this policy is supposed to work. The applicant is simply trying to preserve the units that are there and not go from one nonconformity to another and that has caused great consternation with the community around it which was a FLUM of C and C1. The restrictive covenant will be recorded prior to approval so the policy is not invoked. Some concerns have been raised regarding large high-intensity commercial development. This is already protected in the code so when you go to suburban commercial, anything over 2,500 square feet of commercial retail becomes a conditional use. Racetrack looked at the property as a gas station. By changing this to mixed use commercial, it provides for the least allowance for intensity on the site, and there can't be anymore density because of the restrictive covenant, thereby making this property the least impactful. Some people thought this should be a church or a school, and they have the largest impacts on areas with some of the most significant traffic generation, and institutional uses either under suburban commercial or institutional are already permitted as of right.

The Doherty's are just trying to utilize the property as it exists today, and have already submitted the conditional use approval to indicate this is what they would like to do. Mr. Smith hopes the concerns of staff have been answered that there is no increase in allocated density by providing the restrictive covenant, and will work with anyone who has concern. Mr. Smith hopes the

Commission will recommend approval with the condition of the restrictive covenant. Mr. Smith presented the existing site map, explaining that the buildings would be repurposed as they are.

Commissioner Demes asked about the access and whether it was privately owned, which was confirmed. Commissioner Anderson stated that he had read somewhere that the applicant wanted to mitigate the traffic on Largo Road and that most access would be off U.S. 1. Anyone who has driven in the Keys knows that there are two lanes up in that area, and one lane you can take Card Sound. The other two lanes as you go past Circle K, has everybody jockeying to be the first to get out of the Keys. There's also a curve between the north and southbound lanes of U.S. 1, and he wanted to know how northbound traffic would access the property.

Ms. Barbara Mitchell responded, pointing out the limited access on the site plan because of the median, but Reef Drive has access that carries down past the Aqueduct Authority to another road that does provide the ability to turn right and left. There is that opportunity for north and southbound access to the site that way or through Largo Road. When working through the conditional use process, that will be addressed to come up with an opportunity and suggestion for how to handle traffic access in and off the site.

There were no further questions from the Commission. Chair Scarpelli then asked for public comment.

Ms. Maria Ljuba of 843 Largo Road stated that she does not believe 839 Largo Road is a mixed use commercial property. When the attorney said that it would make all of the properties in the area go to mixed use commercial, she does not believe that is the case here. She is in total opposition to this as she lives two houses down. Just the other night she was out front with her grandson and although the Doherty's have said they want to make this part of the community and an upgrade to the community, she feels they have not been quite honest with the planning board. The entire time they have had the property they have been making profit on the property. They've had Zumba classes, they have the property divided out with a fence, and have the residential properties rented, possibly to a Monroe County employee. She has put in a code complaint for the boulders Mr. Dougherty had placed in the front of the property on the easement, which was a code violation and were moved, for a deterrent for some of the people. There are huge mulch pits erected on the property creating runoff to her property, and she can find no study about this runoff. Her property at 843 was where two of the drains were placed on the easement and across the street because of flooding. The County spent a lot of money to put those drains in. Currently, there is construction equipment sitting on the property. There were building permits pulled and work is being done above and beyond. Anything the Doherty's have said she has not seen come to fruition. Back to being out front with her grandson riding his bike, this is a residential area and not an industrial park. This is one of the last largest properties left in the Keys. When Ocean Studies built the school they had to wait to obtain the property next to them, which was also a church, to have a mixed use room for the students. If we give up all of these large properties there is nothing left. The Doherty's bought a property which they knew had the land use management that is currently where it is. It is just wrong. Deed restrictions can be removed, just like you can change a land use management. She lives two houses down, works at Saint Justin's Church, helps run a food pantry and a daycare at Saint Justin's, and her house should not be mixed use. She believes the community needs to be preserved. They have not met

all requirements and are not compliant. She thinks it's wrong. In the letters where people sent support, letters should not be accepted if they don't have addresses. She had collected proposed opposition forms for over 100 people, and because the file number was changed on this file they could not be used. She would have been required to go out and get all new ones. Most of the letters that were received, if you take a look at them, are from realtors and not from the neighborhood.

Chair Scarpelli asked about the parcel behind Ms. Ljuba. She responded that is owned by a company called Olamar Stone, which had cut down every mangrove behind it. Chair Scarpelli stated that he would be concerned with the runoff from that as well. Ms. Ljuba added that she is a huge part of this community and if this goes through, her house is going up for sale. This is a neighborhood, not an industrial park.

Chair Scarpelli asked about the file number change. Ms. Tolpin responded that the proposal referred to was submitted along with the previously proposed map amendment that the Doherty's had applied for which was then withdrawn, and then the FLUM amendment was revised. There were protests that were received as part of a file that the applicant had then withdrawn. Ms. Lustberg added that the file number had not changed, it's all part of the same file to change the FLUM amendment, but the proposal has changed. Initially, the proposal was to change it to a commercial FLUM. Under the same file the proposal is to change it to the mixed use commercial FLUM. Ms. Tolpin added that she could put up a table to compare the two as there are some minor differences in commercial intensity. The bigger difference is the lack of allocated residential density.

Mr. Oscar Ronda of 839 Largo Road and 453 Big Pine Road in Key Largo, affirmed that both of his properties are residential and that 839 Largo Road is directly next to this property in question.

Ms. Tolpin interjected that the applicant's presentation had made multiple references to this proposal being sought to bring the proposed use into conformity. The current use is still permitted as an institutional use. There has been no sort of development approval or development order approving a nonconforming use on the site with the exception of the dwelling units that were referenced. If those dwelling units were institutional residential, that could be consistent with the institutional FLUM and maybe that's how they were used in '87, she does not know. But, it is important to note that the dwelling units, if they are market rate, are currently nonconforming to the institutional FLUM and will remain nonconforming if the FLUM is amended. The suburban commercial zoning district in the mixed use commercial FLUM do not allow for new market rate single family residential units. Existing units are protected and Code Provision 130-163 allows for protection and redevelopment of lawfully existing units. That remains in existence whether the FLUM is institutional today or mixed use commercial or commercial one. Chair Scarpelli agreed that it is the same scenario because it's still not conforming to the land use district. Ms. Tolpin indicated that was correct, adding that they are protected, can be built, and are actually not considered to be nonconforming based on the language of 130-163 which applies regardless of what the FLUM designation is.

Ms. Tolpin wanted to add one other point of clarification, that there is another property that is about a tenth of a mile away from this property on the opposite side of U.S. 1 that has been

recently amended to the commercial FLUM designation, and it is adjacent to mixed use commercial. There's another property that is adjacent to that one that is in the process of being amended, transmitted by the Board, currently awaiting feedback from the State right now. So, there are other commercial FLUM areas within the same vicinity of the property. Mr. Morris confirmed that that was Del Sol Point and the property owner adjacent to it. The Planning Commission did recommend approval of that FLUM amendment which was approved by the BOCC and it was transmitted to the state. Chair Scarpelli noted that zoning doesn't necessarily have to follow property lines.

Ms. Tolpin also added one more point of clarification to follow the presentation and the comments, that while there is clearly community opposition to the request, she wanted to make it clear that based on the analysis provided, staff is not necessarily in opposition to a FLUM amendment for this property. However, what is currently proposed today is inconsistent with the comprehensive plan and within the comp plan, the Discouragement Policy 101.5(g)(6) does not allow for the option that the applicant is proffering. While it is an interesting idea, there have been other mechanisms that the County Commission has elected to adopt or approve that other applicants have utilized in this situation such as site-specific subarea policies. That is an example where the allocated density on a site has been essentially eliminated to allow for some sort of FLUM amendment. What is being proposed today, while it sounds good when talking here today, it is really cutting it close because it is a mechanism not within the Comprehensive Plan or an option the Comp Plan allows. That is the basis for staff's recommendation for denial.

There was no further public comment. Public comment was closed.

Mr. Bart Smith wanted to add a couple of brief responses. First, staff is not stating they're opposed to a FLUM amendment, and second is we're talking about a Discouragement Policy. Discouragement is not a prohibition, it's discouraged. That's why he believes that what is being provided not only not invokes it but causes the discouragement to actually operate in that you're looking at this as what is the most appropriate FLUM for this parcel, and it's mixed use commercial, just like the entire community is with the suburban commercial there. To discourage map amendments that could potentially allow density, this applicant is proposing a restrictive covenant. He requests the Commission recommend approval with the requirement that a restrictive covenant be provided prior to adoption.

Mr. Morris wanted to advise the Planning Commission that they are sitting in a quasi-legislative [sic] capacity to consider whether to recommend approval or denial to the BOCC of an amendment to the Comp Plan. Those obviously are subject to review and approval or denial from the State. As seen with creative ideas like the Boat Works project in Marathon, it is a risk to drag the stick on the tiger's cage of the State to approve things that, while innovative, don't find a home in any established law. A few years ago the legislature and governor approved significant stick to be wielded against local governments that approved development orders and development permits that are inconsistent with the comprehensive plan. Mr. Morris agrees with the professional staff that the appropriate decision should be a recommendation of denial because the proffer is not consistent with the two avenues to satisfy the discouragement policy in the comprehensive plan. Like the Ten Commandments, there is not a footnote or an asterisk next to any of those ten rules. The discouragement policy is mercifully austere in terms of the avenues

that applicants are provided to satisfy it, so we live in a political environment where being too clever by half can obviously get a local government in trouble when it comes to drawing outside the lines of what's in the plain text of a comprehensive plan provision. There's that real world risk in terms of our relationship with the State to be cognizant of. Mr. Morris does not believe that the staff's view is afield from the text of the comp plan. There's no two ways about it, you either satisfy the discouragement policy's two avenues or you don't.

Ms. Tolpin wanted to state her professional opinion on the record, that there are avenues that the applicant could pursue that could result in what their desired outcome is, whatever the actual proposed use is in a site plan such as that. Of course, she can't promise that's going to be approved, but there are avenues within the code and comp plan that could be pursued. Unfortunately, the current avenue, the current FLUM without complying with those one or two options, is inconsistent and is not one staff can support.

Mr. Morris added one clarification, stating that he does not have a DeLorean so he cannot go back in time to verify, but someone gave him a heads up that he may have inadvertently said quasi-judicial, and this is a quasi-legislative proceeding.

Commissioner Demes reviewed the dates of the community meetings held with dates ranging from three years ago in January, another one four months later, then most recently a community meeting via Zoom three months ago, and the DRC meeting two months ago, and wanted to know if there had been a significant decrease in objection over this time period. Ms. Tolpin stated that there had been.

Chair Scarpelli asked Mr. Smith why mixed use rather than commercial since there's already a precedent set right across the street. Mr. Smith stated the original proposal was commercial and C1, and that was what had caused tremendous consternation of the neighbors. After those concerns, and concerns of a use being considered abandoned, the idea was to bring this back to something more comfortable within the confines of the area, and the idea is to bring the uses into conformity.

Ms. Tolpin read a section in Code Section 130-163, "Notwithstanding the nonconforming use provisions of 102-56, existing lawfully established residential uses shall be entitled to repair and/or replace such dwelling units with the same type of dwelling unit and not be considered nonconforming uses." Chair Scarpelli added that then the abandonment clause does not apply. Mr. Smith stated that they are still looking at what is appropriate, and Chair Scarpelli thought the two residential lots could be pulled out of the proposal. Mr. Smith stated they could withdraw those two RE numbers if that's what would garner Commission support. The residential units are not nonconforming as to the code, which means they are conforming to the code as they are. Ms. Tolpin clarified that was with the rebuild provisions. She is hesitant to state that she is signing on to any sort of guarantee or protection in the future. Every development proposal is reviewed as it comes in to assure consistency and compliance with the code. She does not foresee there being big issues with maintaining some form of market rate unit on those sites because of the ROGO exemptions. If those were removed and the application were amended, that is not going to change staff's position and recommendation.

Ms. Tolpin then presented a table comparing the uses within the commercial one zoning district and the suburban commercial zoning district to show the similarities between the two. If the FLUM were amended, it would still have an allocated density, which is the issue. It is not the residences. It is the development potential in the future. Commissioner Anderson asked if it could be deed restricted to zero. Ms. Tolpin stated that that is outside of the comp plan. Pages 8 and 9 of the staff report show the policy that both staff and the applicant had described, 101.5.26, referred to as the discouragement policy. It discourages private applications for FLUM amendments that will result in an increase of allocated density on a specific site. If you change the FLUM designation to one that will result in increased residential development potential you must mitigate that increase some other ways, and it provides two specific options. What is being proffered by the applicant is not one of those two options. While staff is not in opposition to the overall request, staff cannot support this specific proposal because it does not fit within one of those two very specific options. There are other avenues and staff is happy to work with the applicant about those other avenues, one of which Chair Scarpelli referenced changing the amendment to the commercial FLUM designation less the residential increase, and changing the zoning to C1, less the residential uses. At least at face value it would accomplish what this applicant is trying to accomplish while also being consistent with the comp plan and land development code. Based on what has been submitted, staff would be supportive of that request, but that is not the request today. Mr. Smith again summarized all of the prior presentation and arguments.

Chair Scarpelli liked the idea of taking the residential lots out of it and went through potential scenarios. Mr. O'Connor then stated the rules of procedure, that nothing is to go onto the agenda unless in the professional judgment of the director, and all documentation required, codes, comp plan, et cetera, is in the file and has been conveyed to the Commission. Mr. O'Connor would defer to Ms. Tolpin, if she believes the file is sufficient for that. Ms. Tolpin felt this was treading dangerous water. Staff would have to re-do the analysis and notice for what is actually being proposed, starting the process again and coming back before the Commission, and Ms. Tolpin went through the potential steps. Ms. Lustberg noted that the file for the land use map amendment has not been formally closed and could be altered to remove the two properties that are proposed without starting a new application. Chair Scarpelli stated that he does not want to create work for the sake of creating work, but does not want this to be inconsistent with the comp plan.

Mr. Morris added that enthusiasm for a cause sometimes warps judgments and trying to improvise ala jazz music creative alternatives, off ramping from the text of the comp plan, while intellectually commendable is very dangerous because the legislature has recently codified significant financial liability exposure. It's really a judgment call of the applicant, from what he understands from this discussion, and the applicant had a more earthbound set of proposals and elected to proceed with the more-chancy proffer of this item. He maintains that staff's analysis is correct. Chair Scarpelli asked if anyone else had any thoughts on this. Commissioner Demes stated that he still hadn't gotten over Mr. Morris's comment about the stick on a tiger's cage. No matter what we do, if that is the end result of this, it's not good. The policy is the policy and he will not be the one with the stick.

Commissioner Thomas agreed. There was a mechanism here and a different path was chosen, but the Commission's job is to uphold the policies as we have them. In her mind, it is very black and white. Commissioner Neugent stated that he doesn't take that hard of a position. We know there are solutions to achieving what the end is, it's just how to get there, adding that this is going back to the BOCC to make the final decision. Chair Scarpelli stated that the Commission still has to be diligent with their recommendations. Commissioner Anderson noted that the surrounding areas are mixed use commercial on both sides and across the street, but the policy does state there are two options to change it. It's not that it can't be changed. Chair Scarpelli asked if there was still density with SC, and would it really be increased if they already have density. Ms. Tolpin responded that the current institutional FLUM designation has zero allocated density. The land use district does have density but the comprehensive plan trumps the land development code.

Commissioner Demes stated that sitting on the Planning Commission, they do not have the discretion of the BOCC, and we make recommendations to them and they can have that final discretion. As he sees it, he does not have that discretion. Chair Scarpelli read the FLUM and agreed that it was black and white. Commissioner Demes asked if the Commission had satisfied the applicant's request for maybe additional direction. Chair Scarpelli thought that could be put into the motion. Commissioner Thomas had a motion and Chair Scarpelli wanted to add recommendations, but Mr. O'Connor stated that they did not fully have staff support of that. His recommendation would be to keep the general recommendation as either approving or denying it and anyone that wants can go back and look at the minutes or reporting and see this very thorough discussion. Commissioner Thomas's motion was left as stated. Commissioner Neugent stated he was voting "no" so the BOCC would know there were other opinions, as did Commissioner Anderson. Chair Scarpelli wanted it added to the minutes that he feels this is the unfortunate portions of the Commission's job, where the comp plan is killing him, and he would like to see this come back with the residential units out of the proposal, see the C1 land use change and the commercial FLUM happen, because then the property would come into compliance with the codes and the residential uses can remain for the foreseeable future on those lots as they are.

Motion: Commissioner Thomas made a motion to uphold the staff recommendation of denial. Commissioner Demes seconded the motion.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, No; Commissioner Anderson, No; Chair Scarpelli, Yes. Motion passed 3 to 2.

2. MONROE COUNTY BOARD OF COUNTY COMMISSIONERS, 17175 AND 17145 OVERSEAS HIGHWAY, SUGARLOAF KEY, MILE MARKER 17: A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE TO ACCESS STANDARDS SET FORTH IN CHAPTER 114, ARTICLE VII, A VARIANCE TO THE BUFFER YARD REQUIREMENTS IN CHAPTER 114, ARTICLE V, A VARIANCE TO FENCE HEIGHT REQUIREMENTS IN CHAPTER 114, ARTICLE I, AND A VARIANCE TO THE PARKING REQUIREMENTS IN CHAPTER 114, ARTICLE III, OF THE MONROE COUNTY LAND DEVELOPMENT CODE. APPROVAL WOULD FACILITATE THE PROPOSED SITE PLAN FOR A REPLACEMENT FIRE STATION ON PROPERTY DESCRIBED AS A TRACT OF LAND IN A PART OF GOVERNMENT LOT 3 IN SECTION 34, T 66 AND 67 S, R 27E, MONROE COUNTY,

FLORIDA, HAVING PARCEL IDENTIFICATION NUMBERS 00117930-000100 AND 00118480-000000. (FILE NO. 2023-189)

(11:33 a.m.) Ms. Liz Lustberg, Senior Planner, presented the staff report. This variance application is for four separate items. Access standards on U.S. 1, the major street buffer, allow for fencing beyond the height allowed in the code, and to reduce the number of off-street parking spaces. These are proposed in order to redevelop the existing fire station. Chair Scarpelli confirmed with Mr. O'Connor that these could be voted on as one item, and Ms. Lustberg added that if there was an issue with one, the Commission would not have to vote against all of them.

The access variance is requested because the code says if there is substantial improvement or an expansion, access on U.S. 1 needs to come into compliance. That would be a 400-foot separation, curb cut to curb cut. Proposed is 121 feet as the separation from curb cut to curb cut. The major street buffer requires certain length and type of planting and is confusing the way it's written. The width of the buffer is proposed to be in compliance with the code, but the request is to shorten the length of the buffer as it would lay out along U.S. 1.

Commissioner Neugent interjected that when he's coming down U.S. 1 to Key West that it is a little restrictive, the piece that will stick out that's not included in the removal of the mangroves. Ms. Lustberg explained that there is buffer proposed along the wetland. The buffer for which the variance is sought is along U.S. 1 between the fire station and the Sugarloaf Lodge property. Commissioner Neugent added that when he drives down to Key West he doesn't see the fire station until getting past that little section and it's almost in the sight triangle for vehicles. Ms. Lustberg stated that the sight triangle would be discussed and continued. The fence height is proposed to exceed the required limitation to allow for fill on the property and for fencing to be placed on top of the retaining wall for the fill. The parking variance is requested to reduce the required number of parking spaces from eleven to five.

Ms. Lustberg then presented current and proposed diagrams of the property. The larger property was the original fire station property. The skinny property on U.S. 1 was more recently acquired by the County. Both parcels are aggregated for purposes of the redevelopment of the fire station. This property has been developed with a fire station since well beyond the current code and is currently nonconforming to off-street parking, access standards, and the major street buffer requirements. The site has physical limitations for redevelopment of a fire station in the upgrade proposed. On the diagram, the orange box at the bottom is where the access separation is proposed. The nearest driveway to the fire station is to the Sugarloaf Lodge property. The major street buffer is proposed to be located in the blue rectangle on the FDOT right-of-way just outside of the property bounds. The retaining wall that sits on top of it is in multiple places around the property and they are outlined in green. The off-street parking is proposed to be in the area outlined in purple.

Ms. Lustberg presented the eight requirements for the variance. Each of the four variances must meet each of the eight requirements. As to the access standard, the property has less than 400 feet of U.S. 1 frontage and it would not be possible to have access to the property from U.S. 1 without having an access variance. In general, it would be better for fire trucks to not have to go

through a shared access drive to get out of the property. Staff recommends that this is in compliance with all of the required criteria.

Ms. Lustberg then presented where the major street buffer was proposed to be located. The landscape plan provided shows the site triangle as required by the County and FDOT both from the proposed fire station access and neighboring drive access to U.S. 1. The diagram shows a portion of one tree within the sight triangle. Conditions of approval include addressing the requirement for sight triangles to be in compliance at the time of permit review.

Commissioner Demes noted that the pine tree had lost all its limbs during one hurricane and it slowly came back. It would break his heart if it were cut down and asked what the plans were for that tree. Mr. Mike Roberts, Assistant Director, Environmental Resources, indicated that it is an exotic and would be removed. Commissioner Demes asked about the utility structures and confirmed they were on the County parcel, and asked if it would be in compliance with today's codes. Ms. Lustberg stated that she had not reviewed for that, but did review it for the overall open space requirement on the property. Commissioner Demes thought that as far as line of sight and aesthetics, it is not something he would appreciate. Ms. Lustberg stated that the existing structure was not an issue with existing sight triangles, but she had not reviewed for compliance with setbacks.

The street buffer request is for the length to be 29 feet long rather than 60 feet long. There are issues with this because the proposal is within the FDOT right-of-way. The applicant has applied for several permits related to the FDOT, including landscaping, and received an email stating that the permit had just been issued. Ms. Lustberg has not seen the permit to know exactly what was approved. Staff's recommendations are related to dealing with FDOT and sight triangles and compliance with the codes.

Commissioner Neugent stated this started out and it still may be a public-private partnership with a company starting about two and-a-half years ago, and this has not been done. His question for Mr. Kevin Wilson is if this is the last thing needed to be accomplished for this project to move forward. Chair Scarpelli stated that Mr. Wilson could speak after Ms. Lustberg had completed presenting the staff report. Ms. Lustberg continued that in terms of permit approval for the proposed site plan and building staff had received permit application, it has been reviewed and corrections have been requested. Approval of the variance plus addressing some other requirements for the permit would mean that the permit could be issued. She cannot speak to whether there is any additional development proposed on the property for which she has not seen an application. Staff believes the variance for the major street buffer can be in compliance with all of the eight criteria, with conditions.

Ms. Lustberg then presented a diagram of the retaining wall where the fencing on top is proposed to be located. The rationale is that the fire station has to be elevated above flood, the property needs to be sloped in order to get into the fire station, and for safety purposes, fencing is required on top of the retaining wall. Staff believes this requested fence height variance is in compliance with all of the criteria. Commissioner Demes understood the fence on top of the retaining wall was so people don't fall off the wall. Ms. Lustberg also added or drive off of it. Commissioner Demes asked how high the fence would actually be that sits on top of the retaining wall. Ms.

Lustberg responded that the concrete retaining wall is shown on the site plan as three feet. There are different levels of fencing from 24, 30 and 42 inches depicted, so it's not the same in all areas.

The last of the four variances to discuss is the request to reduce required parking from eleven to five spaces. A couple of years ago the applicant had gotten together with the transportation planner and the transportation consultant, and a way was worked out for calculating the required number of spaces for a fire station based on number of bunks and conference areas. The applicant used that joint analysis to come up with a determination for the required number of parking spaces which shows the number of spaces proposed is not in compliance. The applicant submitted an analysis of how the property is proposed to be used, which is basically the same as it is currently used, with the number of staff and shift changes through a parking study that was sent in and an analysis from County staff written by Mr. Kevin Wilson that indicates there would be a need for four spaces plus the one ADA space.

Staff recommends approval of all four requested variances with conditions, and re-read the four variances. The first three are basic conditions based on the specific site plan and doesn't authorize any variances besides what is specified here. The following conditions are specific to issues with this variance approval, which Ms. Lustberg pointed out in the staff report.

Mr. Kevin Wilson and Ms. Wendy Carter, project manager, came to the podium. Mr. Wilson stated that the applicant is the developer, Mr. Ty Maxey, who was present via Zoom. Commissioner Neugent asked if this was the last step before starting demo and construction of the fire station that has been on the books with appropriated money for several years. Mr. Wilson stated that former County Commissioner Neugent was browbeating him about this because it's been a long time. Mr. Maxey responded that this has been a long time coming, and he appreciates Ms. Lustberg and staff for their impeccable guidance and patience, and yes, these are the final stages of the planning and building permit review. The FDOT driveway and landscape permit have been received. The SFWMD permit is pending. They are ready to start demolition and construction.

Chair Scarpelli had questions regarding the parking reduction. Shift changes usually consist of four firemen, so how do you change shifts without four parking spaces. Mr. Wilson responded that in many cases, the firefighters come from out of county and carpool to work. There will be times when more than four cars show up. The firemen are the ones who take the trucks out of the bays so if they have to, they jockey cars around to take care of it. The fire department has reviewed it and is in agreement.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Commissioner Demes commented that he has no issue with the curb cuts. The advantage of this project is you see red lights come on the trucks starting to pull out and people pull over. In this area it's well proven that it works. He has reservations about the street buffer starting with Kickin Back and what FDOT did to them by taking the paving away, combined with approval to develop that site with housing and the gas station which creates a hazard more than helping anything. He believes the landscaping is elaborate compared to what is there, and he would

rather see nothing except grass than have bushes that may or may not be maintained that may grow to a height not conducive to safety and take up space otherwise available. The history of this site has been used for a lot of other community support activities and he does not know whether that will be continued in the future, but the landscaping would exclude those types of uses. He is okay with that, but he thinks it is overkill with a lot of potentially unmaintained landscaping. He has no problem with the fencing to keep people from driving or falling over the retaining walls. Regarding parking, he questions what the ADA fireman does, but the history of this site shows they park everywhere. If there's ever development beside it there could be an issue but he can see where the parking would go if the need arose, so this should easily accommodate a shift change and he does not see parking as an issue. If there are county or community meetings, people will have to adapt by using the parking by Sugarloaf Lodge. He is all for this project and thinks it is fantastic for public safety and the people of Sugarloaf Shores. but he would opt to save the money and just do grass.

Commissioner Neugent asked Mr. Wilson if the contiguous piece of property to the west was still available for parking. Mr. Wilson stated that the gentleman who owns that whole section has never had a problem with people using that for parking, and Sugarloaf Lodge owns the property contiguous to the fire station.

Chair Scarpelli commented that he does not have a problem with the bushes as the fire kids could take care of it. He understands what Commissioner Demes is saying, but FDOT will come along with their bush hogger [sic] and cut them down anyway. Chair Scarpelli asked staff what they thought about removing the front street buffer. Ms. Tolpin interjected that any development such as this requires a street buffer. To maintain fairness for all applicants, staff is supportive of the reduction. Commissioner Demes commented that it's reduced from 60 to 29, and why not reduce it from 60 to one. Mr. Roberts interjected that the applicant had requested 29 feet and that's what staff had evaluated. That being said, as Ms. Tolpin stated, the County code and comp plan provide for buffers along U.S. 1 for both major street buffers and for scenic corridor buffers for all applicants with development on U.S. 1. To unilaterally eliminate a requirement for one use or applicant would seem to be inappropriate. Mr. Wilson added that while he agrees wholeheartedly with the suggestion, anything that would possibly slow this project down he would not like. He would rather do it as designed and approved and stay with that.

Motion: Commissioner Demes made a motion to approve. Commissioner Neugent seconded the motion. There was no opposition. Motion passed unanimously.

3. MANATEE BOWLINE, LLC, 99 MORRIS AVENUE, KEY LARGO, MILE MARKER 112.5: A PUBLIC HEARING CONCERNING A REQUEST FOR AN AMENDMENT TO A DEEMED MAJOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS REQUIRED FOR THE REDEVELOPMENT OF THE EXISTING MARINA. THE SUBJECT PROPERTY IS DESCRIBED TRACT A OF MONROE PARK, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 3, PAGE 140, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, CURRENTLY HAVING PARCEL IDENTIFICATION NUMBER 00573090-000000. (FILE NO. 2025-053)

(12:07 p.m.) Ms. Liz Lustberg, Senior Planner, presented the staff report. This is a request for an amendment to a deemed major conditional use. This property is on the 18-Mile Stretch and

just across the water from it is beyond Monroe County, so it's at the very tip of Monroe County. This property has been developed as a marina since before the 1960s, and the proposal is to redevelop it also as a marina. Ms Lustberg presented the proposed site plan to keep the 35 wet slips, to add 114 dry boat storage slips, to convert an existing 800 square foot storage building into the marina office, to have a 650 square foot ships store located on a floating structure, and to add an accessory tiki hut and restrooms. Ms. Lustberg presented the criteria for approval of an amendment or brand new major conditional use application, which were basically the same thing. The last item listed is highlighted, being the proposal complies with all additional standards imposed on it by the particular provisions of the land development code, and that all of the site design elements are in compliance. The scenic corridor and buffer yards have compliance that is yet to be determined as there was some discrepancy between the landscape plan and the storage guidelines design sheet. Staff recommends that the plans all be consistent with each other and demonstrate compliance with the code and the permit stage. The applicant specified no pump-out on site, and no liveaboards are proposed. Staff will review for compliance at time of permit review. As a condition of approval staff recommends adding that all marinas regardless of size shall provide signage conspicuously posted at dockage sites educating the liveaboard public about the importance of pumping out, and giving clear direction to the nearest pump-out stations. As part of this application, the applicant submitted both a written narrative as part of the file and a site plan indicating how they propose to be in compliance with the boat storage design guidelines. The boat storage design guidelines go on at length and explain how the structure should be designed, how landscaping should be handled, and how access through the site should be addressed. In staff's opinion, the proposal as a whole indicates compliance with the overall intent of the boat storage design guidelines.

Staff recommends approval with fairly basic conditions. The engineering department shall review any work within the right-of-way. Building permits will be needed. At time of building permit approval the plans shall demonstrate consistency with the boat storage design guidelines as explained in writing in the applicant's boat storage guideline plan in addition to the storage guidelines shown on their specific plan sheet. There was a minor discrepancy between the elevations page showing one of the boat racks on the site plan so to make sure there's no confusion staff recommends the condition that we are approving what's shown on the site plan, and the condition relating to pump-out facilities and signage and that liveaboards are not allowed unless there is pump-out available. The fact that the ships store is on a floating structure, it shall be the responsibility of the owner to comply with all applicable local, state and federal proprietary safety, environmental and pollution control laws, rules and regulations and, again, making sure that the plans are consistent. Proposed condition number eleven is not part of the staff report.

At DRC there was a discussion regarding the proposed pedestrian path running through the property. The site plan shows it as gravel. There were issues about ADA compliance. It was recommended that this path be paved instead. This path was calculated in as part of the stormwater plan but was never subtracted out from the open space as proposed on the site plan. In order to allow the applicant to pave the proposed pedestrian path and have compliance with ADA requirements, Ms. Lustberg proposed adding condition number eleven to approve an open space of 77.57 percent on the property, which meets the 20 percent minimum required.

Commissioner Demes confirmed that the floating structure would be over privately owned bay bottom. Mr. Morris asked if there was a condition providing that the floating structure required the site plan to be changed through the required approvals for the floating structure to be relocated. Ms. Lustberg responded that there is no condition related to relocating the floating structure as the location in the site plan is on the applicant's private property. Chair Scarpelli asked if the applicant wished to speak.

Mr. David Osborn, architect for the project, stated that the main goal of this project is to bring a neglected property into compliance and improve curb appeal. They are asking for no variances and have no objections to the conditions imposed on this application. He appreciates the Commission's consideration for approval.

Commissioner Neugent asked where the next closest marina was to this location. Mr. Osborn believed it could be the one at Ocean Reef, but it was determined that it would be Gilbert's, albeit a different type of marina. Commissioner Neugent was concerned about the pump-out of liveaboards situation as he sees negligence in enforcement, and asked if there was a pump-out boat available since this marina would have more than ten boats. Ms. Tolpin interjected that the State only requires a marina to have a pump-out for liveaboards, which this project does not allow liveaboards without additional approval. Commissioner Neugent stated that there are people who stay on their boats and pump-outs have to be enforced. Millions have been spent on trying to keep the waters clean. He wanted to be sure someone would be there to make sure no one is staying overnight on their boats. Chair Scarpelli stated that it is the property owners' responsibility to do that. Mr. Osborn responded that the owners have agreed to the condition that they will inform anyone coming to the property that living aboard their vessel is not allowed, and when a pump-out is needed they will let them know exactly where to go. Mr. Roberts confirmed signage relative to the need for a pump-out and the closest pump-out station. This facility is not within the service boundary of any of the County's permitted pump-out vessels. Commissioner Neugent stated that that is what concerns him. Mr. Roberts responded that he understands, and the code specifically refers to the ten liveaboards that require that to be required. Commissioner Neugent believed it was ten boats. Ms. Tolpin clarified that for a new marina or marine facility with ten slips or more or one liveaboard slip shall provide a fixed pump-out station. This is an existing marina so that is not required as part of this project. Mr. Osborn reiterated that the owners definitely intend to not allow anyone to live at this marina. Chair Scarpelli thought the concerns were relevant but it's not a code requirement because it's an existing facility. Commissioner Neugent believes if someone just wanted to stay on their boat two or three nights, that it's a liveaboard. Chair Scarpelli added that they wouldn't be allowed to stay overnight. Mr. Osborn reiterated that the owners have agreed to have signs posted throughout the property stating they are not allowed to stay overnight.

Commissioner Demes expressed concerns about the floating structure. Chair Scarpelli stated that it doesn't have an engine. Commissioner Demes was concerned with hurricane preparedness and how that relates to water quality, pollution, boat sinking damage and whatever, and that there is a plan in the design for the shore side facility having adequate structures, cleats and bollards to secure that structure during storms. Condition seven talks about all state, local and federal regulations, and he is concerned that this doesn't slip through cracks. Chair Scarpelli agreed and asked Mr. Osborn about a plan for an impending storm. Mr. Osborn responded that

he has no problem getting all approvals as far as the vessel is concerned for making sure it's completely legal. As far as hurricanes, they can provide County with an emergency action plan. It has been there for many years through many storms, but they will work out an emergency action plan and present it to the County. Chair Scarpelli thought that could be provided at permit submittal. Ms. Lustberg confirmed that that would be added by the Commission as an additional condition. Mr. Morris confirmed with Mr. Osborn that the owner's plan would keep it in the same location as in the site plan. Mr. O'Connor then read the definition for a liveaboard vessel for the Commission.

Commissioner Demes asked if the floating structure was considered a vessel, and Mr. Morris responded that it is not. Commissioner Neugent asked if there were any known seagrasses in this area and if floating structures still had to protect existing seagrasses. Mr. Roberts responded that the code and comp plan are silent as to what types of vessels or structures have to comply with seagrass protection. It is a blanket protection so regardless of the type of structure or vessel, if there are seagrasses present then protections have to be in place. In this case, this is an existing marina, an existing dredged area in existing improved waterways, and the benthic surveys provided with the application did not indicate any seagrass or other benthic resources in the area. Commissioner Demes noted that his familiarity with docks and marinas is limited to the U.S. government, but they have to comply as well in consideration against minimum shading sometimes having a dock out in front of a seawall. He assumes that would be part of the DEP Army Corps permit. Mr. Roberts stated that it's also part of the building permit application process, but is not part of the conditional use. Commissioner Demes thought between the Army Corps and FDEP it would be covered. Chair Scarpelli stated that he would love to see some coverage of the sides of the boat barns rather than just open racks. Mr. Osborn responded that part of the storage guidelines is to provide a certain square footage of landscaping to hide the boat racks. One of the plans shows the areas facing the highway to have landscaping in front of it, and there are a specific amount of canopy trees designated for these areas. Ms. Lustberg clarified that the plans received and written proposal includes screening on the ends.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Commissioner Demes made a motion to approve, to include adding the signage prohibiting overnight stays, and to add an emergency action plan be submitted and reviewed by staff to determine sufficiency.

Motion: Commissioner Demes made a motion to approve with additional conditions. Commissioner Neugent and Commissioner Thomas seconded the motion. There was no opposition. Motion passed unanimously.

4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM SPARSELY SETTLED (SS) TO SUBURBAN RESIDENTIAL (SR), FOR PROPERTY LOCATED AT 10 CORMORANT LANE, GEIGER KEY, DESCRIBED AS THE NORTH ½ OF LOT 8 AND ALL LOTS 9 AND 10, BLOCK 4, BOCA CHICA OCEAN SHORES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 5, PAGE 49, PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, CURRENTLY HAVING PARCEL IDENTIFICATION NUMBER 00141680-000000; AS PROPOSED BY KIMI C. ROTHER;

PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (LUD) MAP; PROVIDING FOR AN EFFECTIVE DATE. (FILE NO. 2025-163)

(12:34 p.m.) Ms. Barbara Powell, Planning Policy Advisor, presented the staff report. This amendment is to go from sparsely settled to suburban residential, and a site map was presented. The majority of the vacant parcels surrounding this is either Navy or listed under United States of America property. It is in the MIAI, the habitat is developed land, the adjacent uses are single-family with Navy property surrounding it, Tier III, and the flood zones are AE9 and AE10. The reason for the amendment is to allow the applicant to build a pool in the future. Ms. Powell presented a close-up of the site. There have been similarly-situated properties receiving approval for the same zoning change, a larger parcel to the north and a smaller parcel to the south. The reasoning is for the change in open space. Sparsely settled has an 80 percent open space ratio while suburban residential has a 50 percent open space ratio. There is no increase in allocated density for the property. Staff recommends approval.

Chair Scarpelli asked if the applicant wished to speak. Ms. Kimi Rother, applicant, stated that staff had done an awesome and thorough job with her application, that she meets all standards and ordinances, and looks forward to an approval of this application as they are eager to put a pool in.

Chair Scarpelli then asked for any further public comment. There was none. Public comment was closed.

Christina Gardner, Ex-Officio Member, NASKW, stated that NAS Key West is opposed to the proposed ordinance amending the land use district from sparsely settled to suburban residential. The subject property is within the MIAI, specifically within the type one accident potential zone and the 70 to 74 DNL noise contour as designated by the February 2018 AICUZ study. Amending the land use district map results in a reduced minimum open space requirement within this type one accident potential zone from .8 to .5, and the land use compatibility recommendations find that residential usage is incompatible in this zone and is strongly discouraged in the 70 to 74 DNL.

Commissioner Demes stated this is probably the first time he will go against anything in the MIAI. He's been out there and when he looks at it, this is an existing population that will not increase the density, so it's been bought into and the Navy has basically, over the years, bought every undeveloped lot that was out there through condemnation to buy away the problem of noise complaints and accident potential. This is a high noise contour on the approach of the main runway. There have been crashes in that zone before. It's a basic risk, but this house is there and will stay there. Understanding that when looking at this zoning and use, especially in the MIAI and AICUZ, you want to curb development, but this is not going to make any less development. It will actually increase the quality of life for the homeowner, even though you can't mitigate outside noise. He thinks it gives relief to a homeowner in the MIAI knowing there's not going to be people building beside them. The negative is a very negative, which is

when you make that change it allows a use that isn't allowed now and that would be allowing transient. He deeply appreciates Ms. Gardner's comments but he will be voting for this one. Ms. Gardner added that there is also an available major conditional use in the SR which is for RVs and campgrounds that is not allowed in sparsely settled. Chair Scarpelli agreed, but thought this lot would not be big enough for either one of those uses.

Motion: Commissioner Thomas made a motion to approve. Commissioner Anderson seconded the motion. There was no opposition. Motion passed unanimously.

5. ROEBLINGS, LLC, AND MARILYN J. ROEBLING REVOCABLE TRUST, 95325 AND 95351 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 95.3, OCEAN SIDE:
CONSIDERATION OF A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION APPROVING THE DEVELOPMENT OF AN AFFORDABLE HOUSINGS PROJECT OF MORE THAN 20 AFFORDABLE UNITS PURSUANT TO MONROE COUNTY LAND DEVELOPMENT CODE SECTION 139-1(B)(6)H. ON PROPERTY DESCRIBED AS PARTS OF TRACTS 5, 5A, AND 6, SOUTHCLIFF ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 45, AND PART OF GOVERNMENT LOT 1, SECTION 13, TOWNSHIP 62 SOUTH, RANGE 38 EAST, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, AND ADJACENT BAY BOTTOM AND SUBMERGED LANDS, HAVING PARCEL IDENTIFICATION NUMBERS 00483360-000000 AND 00483350-000000. (FILE NO. 2025-236)

(12:46 p.m.) Mr. Thomas Francis-Siburg, Acting Development Review Manager, presented the staff report. This is an affordable workforce housing project for greater than 20 units. The agent for the applicant, Mr. Trent Claybaugh, is present today. This property is located in the suburban commercial zoning district and the request is to allow an affordable workforce housing project consisting of 79 affordable workforce housing dwelling units and two market rate units. This request comes from a single provision in Code Section 139-1(b)(6)(h). Affordable housing projects shall be no greater than 20 units unless approved by resolution of the County Planning Commission. The Planning Commission's decision may be appealed to the BOCC using procedures described in Section 102-185 with the BOCC serving as the appellate body for the purpose of this section only. It is important to note that there are no criteria in the code that must be met in order to obtain this approval by this Commission. This is part of a pending Live Local Act project. An application for development which includes the site plan for the proposed development has not been submitted or reviewed for consistency and compliance with the land development code. A Live Local Act authorization letter has not been issued to the applicant as of today.

This Live Local Act and the authorization is a common name for a section in statute, Florida Statute 125.01.055(7), and is the process established through Administrative Directive 01-2025 that the County demonstrates or provides to comply with this statute. An authorized Live Local Act project has certain requirements. It must be on property zoned for commercial industrial or mixed use, must be multi-family, 40 percent of units must be rental units that are deed restricted for thirty-plus years as affordable as defined by statute, and the floor area within the residential units and any residential accessory buildings must make up at least 65 percent of the development's total square footage. If a project complies with all of those items then it must be administratively approved. The statute waives certain requirements such as if it is an authorized

Live Local Act project, then the County may not be required to require the project obtain a conditional use approval. If this weren't a Live Local Act project, this would be coming before the Commission as a major conditional use approval. However, this appears to be a pending Live Local Act project and the major conditional use approval would be not required by the statute.

In 2022, the Department issued two ROGO exemptions, one for each of the parcels. In July of 2025, the Department held a pre-application conference with Mr. Claybaugh for a potential Live Local Act project consisting of 176 units. In August of 2025, the BOCC adopted Resolution 290-2025 approving 79 workforce housing early evacuation units. These early evacs are subject to 99-year deed restrictions and would comply without additional Live Local Act authorized project requirements.

Commissioner Demes asked about the one requirement of 30 years for the rentals and now there's a 99-year restriction as well. Mr. Francis-Siburg responded that the allocation reserved for this project is for the workforce housing early evacuation which requires a 99-year deed restriction. The statute requires a deed restriction of at least 30 years. So this 99-year deed restriction complies with that requirement. Mr. Francis-Siburg continued, on December 31, 2025, the County received a request for Live Local Act authorization application form for the development proposed through this request. At this time, that application is deemed incomplete and requires some corrections, but it is evident to staff that this will likely be a Live Local Act project. Staff recommends approval with the standard conditions, that this approval does not constitute approval of any use on the subject property and is not a final approval for certain development, the approval does not waive or reduce any other requirements, generally the proposed project has not been reviewed for compliance, and the project must demonstrate compliance.

Commissioner Demes stated that one of the requirements was the floor area of the particular units must equate to 65 percent of the development area and asked what that percentage is. Mr. Francis-Siburg responded that that is if the project also proposes non-residential uses. At this time, the project appears to propose 100 percent residential, so 100 percent of the project would be developed for this residential use. The clubhouse would be considered accessory. Chair Scarpelli asked about the height on page three of five being 35 but allowing up to 38 if multi-family is considered commercial, and he thought the 35 height was only for single-family residential, not multi-family. Mr. Francis-Siburg responded that his understanding is that the statute allows the highest allowed height with local laws. Ms. Tolpin interjected that Live Local does have additional height allowances. For clarification, this item is not approving any specific plans for any specific structures. It is a review of whether this is an appropriate site for an affordable housing project of more than 20 units, and what is being proposed is 79 units and the two market rate.

Chair Scarpelli then asked if the applicant wished to speak.

Mr. Trent Claybaugh, agent for the applicant, presented the site plan and stated that this is really just to approve the idea of putting 20 or more workforce housing units on this site. Gorman and Company has an extensive history developing affordable housing in the Florida Keys and has a

42-unit senior property in Key Largo, a 36-unit property in Tavernier, Bluewater, and a 36-unit townhome property in Islamorada, West End Villas. Today he is respectfully requesting that the Planning Commission approve the Resolution Report that will allow development of 20 or more workforce housing units on a 9.2 acre site in Key Largo. The current concept consists of 81 two and three-bedroom townhome units organized among two and three-bedroom multi-unit buildings. The property would include a community building, a pool and a fitness facility, and some other amenities on the water for games and a pickle ball court. All units would be elevated at least one foot above base flood elevation per the requirements. It's worth noting that current elevations do not show exceeding the 35-foot height unit. It would be two stories of residential over the elevated structured parking area. The proposed density is less than nine units per acre, and the site plan preserves acres of green space in the form of a large courtyard park and large waterfront park on the ocean side. Last August the BOCC approved a reservation of 97 early-evacuation workforce housing ROGOs for this project and the site currently has two ROGO exemptions, for a total of 81 units. This project will fill a crucial void in the Monroe County housing supply by providing desirable large rental townhome units suitable for families with small children, and a wide range of incomes that otherwise would not be able to access comparable home ownership opportunities. A three-bedroom, two-bathroom house in Key Largo or the Upper Keys generally goes for \$700,000 at a minimum or more, and a lot of these households don't qualify for the income restrictions present at the other properties. The property is located at the southern tip of Key Largo allowing it to reasonably serve workers all the way from Ocean Reef down to Islamorada and even Marathon. He will take any suggestions and answer any questions.

Commissioner Demes asked him to point out the two market rate units. Mr. Claybaugh responded that at first they were contemplating they would be detached units out on the peninsula. After reflection and re-contemplation they decided to include one unit on each side facing the water in the existing townhome structure to create an entire amenity space on the water and not block those views in that green space from the tenants. They want to create the best possible environment for the people living there and believe it's a unique property to deliver a really desirable place for the middle higher workforce housing folks to live in.

Commissioner Anderson asked if there was a boat ramp and if there were plans to continue using that. Mr. Claybaugh stated there is an existing boat ramp and basin with several dolphin pilings in the basin. He thinks a lot of people choose and want to live in and work in the Florida Keys because they want access to the water and within the ability to do so, they want to continue to utilize the existing boat ramp for the tenants of this property. Mr. Morris asked if it was 97 or 79 units. Mr. Claybaugh stated it was 79 affordable plus two market rate, for a total of 81. Chair Scarpelli thought the site plan was very interesting, keeping the houses away from the adjacent neighborhood, keeping a lot of green space which is not often seen. He likes the fact that the houses are in the higher flood zone areas and set back away from the waterfront. He had seen a couple of letters of opposition to workforce housing in this area from a neighboring street and it should be noted workforce housing is not necessarily some type of ruffraff or a Section 8 housing complex that's going in here.

Mr. Francis-Siburg interjected that staff has not reviewed the site plan for compliance and the site plan as presented is not part of the resolution request. Commissioner Demes asked if this

would require a variance for the entrance off of U.S. 1. Chair Scarpelli responded that that would be the only thing the Planning Commission would hear, that Ms. Tolpin would approve this, aside from that variance. Commissioner Demes thought that as it is now, it's probably one of the safer areas to be able to pull off in a gated area and be set back so far from U.S. 1, and he thinks that will carry through to the site plan as well. He asked staff about 35 feet plus 3 with the three stories, and asked what that equates to as far as maximum elevation if somebody decided to do three stories. Ms. Tolpin stated that from the Live Local directive, the 35 up to 38 feet is the current code requirement for residential development. The height is measured from grade currently, which is currently defined as being measured from either on site prior to construction or the crown or curb of road directly adjacent to the property. That measurement is going to be measured from wherever that grade elevation comes from. The BOCC is currently in the process of potentially amending that definition. The three stories, habitable floors over base flood comes from the Live Local directive. There is a lot of ambiguous language in the Live Local Statute as to what the County is and is not required to approve. There is very specific language in that and in reviewing any development proposal that is requesting to be authorized under the Live Local authorization. Staff will be reviewing it very closely with the exact language and requirements. With that being said, right now it is her understanding they are allowed to be three stories and there is not necessarily a blanket height maximum, but it will require further review. Commissioner Demes stated that it is wildly open ended. For two stories we have such a finite explanation but not for three stories. Ms. Tolpin added that this is the furthest a project has come so far that is requesting authorization in Monroe County under the Live Local Act, so staff is actively becoming more familiar with those requirements and what exactly that entails.

Mr. Claybaugh added that for reference, the townhomes that are along the courtyard are set back over 50 feet away from the setbacks on either side. There is almost 150 feet in the courtyard area between the two rows of townhomes so it's a substantial, large park area. They are proud of how much green space is being preserved with this site plan. With regard to the income calculations, what will set this property apart, especially from the housing going in at the Publix site, is that utilized FHFC financing and they are held to that strict 100 percent AMI per FHFC definitions, while the County allows differentiation between related households and unrelated households. So while they have an income restriction for a three-bedroom, four people, two parents with two kids, can make up to \$130,000. Technically, in a three-bedroom here, two parents plus two kids can make up to \$210,000 per year. So this is really targeting a much wider array of incomes and that's where they are going with this concept. Chair Scarpelli stated that at the BOCC meeting yesterday it became apparent that as much low-income multi-family housing has been built as is needed. There is currently only 85 percent occupancy at the multi-family housing projects. That higher end may have more room there. Commissioner Neugent asked if the residents would have access to the boat ramp, and the answer was yes.

Chair Scarpelli then asked for public comment.

Ms. McKee Gray stated that they just became aware of this development last night as a result of a newspaper article, so she appreciates being able to attend via Zoom. She appreciates the need for workforce housing and is no way against development of this site as a resident on Dove Road. However, she urges that the housing units be required to be shifted away from the single-family homes on the northeast side of the property and instead be concentrated on the south side

adjacent to the Southcliff Estates development. Placing the higher-density units next to established single-family residences is incompatible with the existing neighborhood character and will have long-term impacts on privacy, noise, property values and general quality of life for those along Dove Road. By shifting the development further south, that would allow the developer to take opportunity of the existing mature trees that are along that property line and reduce their mitigation costs for having to replant specimen trees. She urges Gorman and Company to consider that as part of their site plan to provide additional privacy for the residents along the north side. No residents received notice of this project. She is not sure what the process is for providing that notice, but it is disheartening that they did not know that this was occurring at all until it was broken to the media. Workforce housing is important and it should occur, but it needs to occur in a manner that is consistent with surrounding land uses. She hopes that Gorman and Company reaches out to the land owners to come up with a site plan that accomplishes the workforce housing goals while also maintaining the character of the local community. Chair Scarpelli noted that the houses are over 50 feet away from the northern property line.

Ms. Ali Ciaramella of 1024 Dove Road in Key Largo, lives directly adjacent to and north of the proposed development site and also plugged the Zoom opportunity. Ms. Ciaramella has lived in this house since 2020, it's the first home she ever owned with her husband. They bought the house because of the quiet neighborhood and the beautiful trees that were referenced that sit directly behind her house. She serves as secretary on the board of the HOA park because she wanted to get to know the neighbors and do her part for the community. She is aware that not a single person she has spoken to is in support of this proposed development. Most mornings and afternoons her husband walks their daughter to and from her school directly past the proposed development. Some of the concerns she has are traffic, the affect it will have on this piece of property and the trees and foliage that are there and the wildlife that they protect. She stated that the riffraff is not a concern of hers, that she wants people who come down to have a place to live in her community, but this kind of development with a minimum of 20 units, total 81 two-story buildings over parking are unheard of in her neighborhood. She is not interested in a development directly behind her being an experiment for these regulations that apparently haven't really been utilized before, based on what she just heard. She doesn't want her daughter living in a construction zone for the next two years. She then read a comment from her husband, "I believe my neighbors will have more detailed arguments about why, although the Keys need workforce housing this isn't the right place for such dense development. Unrealistic evacuation time, more traffic, more noise, and more strain on our infrastructure and environment. All I would say is that I don't think I moved to Key Largo to look at three-story duplexes. If the Commission doesn't downsize the project I would ask them at the very least to consider requiring the developers to preserve the existing tree line on the northern side of the property for the quality of life of the current and future residents who I hope will be able to look out their windows and see what makes the Keys a special place to live." We are asking the Commissioners to either downsize this project and/or preserve the existing tree line that is so important to our quality of life.

Chair Scarpelli clarified that this project is way under density and not even close to max out with 81 units over a nine-acre site. Ms. Tolpin confirmed that was correct, utilizing the Live Local Act for Florida. Chair Scarpelli asked what the density would be without Live Local. Mr.

Francis-Siburg responded that he believed it was between 181 and 187 units through Live Local if they get the allocations. Chair Scarpelli stated that by doing only 81, it could be a hundred units more dense, which he believes would be crazy. Ms. Tolpin noted that they originally had proposed 200. Mr. Claybaugh stated that when they had gone before the BOCC, they were given 79, which resulted in something much more consistent with the community character. Chair Scarpelli thought a lot of green space was being preserved compared to other projects that have been recently approved in the Upper Keys. Here it is not a concrete jungle. He believes this would bring good character. Mr. Francis-Siburg confirmed that other requirements such as traffic are not waived and must be met for compliance, even though it won't be coming before the Planning Commission.

Mr. Luke Krenik of 1026 Dove Road, Key Largo, stated his back yard borders the north side of this property at mile marker 95 and he is opposed to this development. The scope of this project totally goes against the current character of the surrounding neighborhood and will significantly impact the environment and wildlife including a large hardwood hammock tree canopy. The property also falls under critical habitat for 27 threatened and endangered species. Furthermore, this project will negatively affect the surrounding community. Traffic will get worse. Utilities and public services will become more strained than they already are. Noise and light pollution will increase and property values will likely fall. There are already twelve affordable units on the market on an immediately adjacent property and none of them have been rented since August 2025. Based on the vacancy of the neighboring project, he sees no local benefit of this project. Lastly, he would like to know why there was no notice provided to neighboring property owners to allow feedback to Commissioners or some sort of public comment before the units were allocated in 2025. He would also like to know why he received no notice for today's Planning Commission meeting besides a small sign inside of a bike path in some tall grass.

Ms. Tolpin noted that this item was advertised in the local newspaper and posted in accordance with the land development code. There were no notifications sent out to surrounding property owners. The code does not require it for this type of application. Chair Scarpelli noted that it's a weird scenario with this Live Local Act, and these requests for certain things don't generate that requirement. However, the neighborhood would be noticed for the driveway access variance. They won't get notice for the administrative approval, but could appeal the administrative appeal. Ms. Tolpin added that this would come in in the form of a building permit application. If the residents want to be kept up to date on this they should contact staff for email addresses and they can submit public record requests to see where the project is in the building process. There is an opportunity to appeal building permits. The Live Local forms have been posted on the pending applications web page for the public to see what projects like this one have been applied for. Chair Scarpelli stated that he didn't like hearing how people were getting sort of side shocked by these. Mr. Morris added that in addition, notice with regard to the reservation is achieved through timely publication of the County Commission agenda. Chair Scarpelli noted that the Southcliff project that is vacant is at a lower income level and requires a different approval process, which is a different model than what is proposed here. A lot of the trees will be remaining, respecting the waterfront. It's not what it sounded like. Mr. Krenick added that if there could be a way of taking advantage of the fact that there is already workforce housing to the south and possibly orienting a project to the south versus these homes that were built in the

sixties to the north. The neighborhood is willing to hear any concerns. We're not against workforce housing, it's just making something that works for everybody.

Ms. Karen O'Donnell wanted to reiterate everything that Luke, Ali and McKee had already gone over. This neighborhood is quiet and small and they love where they live with the trees and everything. Her concerns are the same as what has already been stated, but she is also concerned with other pollutions like noise and water pollution because now that little cove will be utilized a lot, she would think. It does sound like at least they're willing to work with the neighborhood. Ms. O'Donnell asked if there would be an opportunity for a community meeting to get together and talk about this whole development with maybe some concessions that might be offered. It doesn't seem like there will be an opportunity to do that with this Live Live [sic] thing.

Ms. Tolpin responded that assuming that the project will be authorized under Live Local, which she believes it will be, then there would not be a required community meeting. That would be between the applicants themselves and the community. Mr. Osborn stated that he can offer that he is willing to hold a community meeting to hear feedback and make modifications where necessary and appropriate, absolutely. He provided business cards. Mr. Morris added that the caller must understand that from whence the Live Local Act came was not the law of the BOCC, it is a pre-emption law that was approved by Governor DeSantis and the Florida State Legislature. Chair Scarpelli added that if this was a typical County project there would be lots more meetings after this, but that is not the case here. However, Mr. Osborn seems like a stand-up gentleman and is sharing his contact information.

There was no further public comment. Public comment was closed.

Commissioner Demes asked to be educated on Live Local Act as there are a lot of things that are different about it. What if the Planning Commission said no, would it then appeal to BOCC? Chair Scarpelli responded that there would be an appeal to DOAH. Commissioner Demes read from the Act stating affordable housing projects no greater than 20 unless approved by resolution of County Planning Commission. That decision may be appealed to the BOCC using their procedures. So if the Commission said no, this would go to the BOCC, and would it also go to the BOCC if they said yes. Mr. Morris responded that he is loathe to unveil the potential causes of action that the applicant may have in a public setting, but candidly he thinks that if he were the applicant he would probably file a petition for a writ of mandamus which is a type of lawsuit that asks a judge to issue an order that says, do your job. In an instance in which you don't have any discretion, that's the key takeaway. A lot of people file misbegotten lawsuits for writs of mandamus desirous of a particular outcome. When there are criteria such as standards and rules to apply, a writ of mandamus is all bluster. But, in the event there's a scenario which the decisional body doesn't have any criteria to apply, you basically just have an on or off switch. There's not really an ability to hit a dimmer. He would be concerned that a mandamus petition would be filed because this is a bit of vestigial code that he assumes has been left over from legacy language from some previous edition of the code. Commissioner Demes stated that everything he sees is within the realm of what is expected or allowable under the Live Local Act, so he doesn't see a basis to do anything but rubber stamp this thing. Chair Scarpelli stated that it is sort of a checking of the box portion of the code, unfortunately. Luckily, there was some constructive discussion and the site plan was shown to the public, so it wasn't all for nothing.

There are some positives to this but the Commission essentially just must do their paperwork and move on. Commissioner Demes stated they would get a crack at the variance at the entrance which is a non-issue, just like this project is a non-issue.

Commissioner Anderson asked how long construction would be expected to last from start to finish. Mr. Osborn responded from 18 to 20 months.

Motion: Commissioner Demes made a motion to approve. Commissioner Anderson seconded the motion. There was no opposition. Motion passed unanimously.

6. SHAWN WADE HUDGINS, 2 AMARYLLIS DRIVE, KEY HAVEN, MILE MARKER 5: AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY THE PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING THE DENIAL OF AN ADMINISTRATIVE VARIANCE TO THE FRONT AND SIDE YARD SETBACKS, BY THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 1, BLOCK 1, KEY HAVEN 2ND ADDITION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 4, PAGE 93, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00134610-000000. (FILE NO. 2025-242)

(1:35 p.m.) Ms. Liz Lustberg, Senior Planner, presented the staff report. This applicant applied for a variance to the secondary front yard setback which is a 15 foot requirement, requesting 7 feet, seven inches; and a side yard variance from the required 10 feet to the 1 foot, 2 inches. Planning staff reviewed the application and denied the variance based on non-compliance with criteria numbers two and eight, with the other six being in compliance. When there's a variance, there are eight criteria and all of them need to demonstrate compliance in order for the variance to be approved. Criteria number two is the failure to grant the variance would result in exceptional hardship to the applicant. Ms. Lustberg presented a copy of the exact response by the applicant to explain how this property meets the criteria. Staff's review determined non-compliance because the applicant had submitted a building permit that showed the tiki hut at the same dimensions in compliance with both the secondary front and primary front yard setbacks. The second criteria number eight is that the variance is the minimum necessary to provide relief to the applicant. Ms. Lustberg presented a copy of the applicant's exact response explaining why he meets the criteria. Staff determined this also was not in compliance, again because there's a building permit application submitted by the property owner that had the tiki hut in compliance with the setbacks.

After denial of the variance, the property owner appealed. Ms. Lustberg presented the basis for appeal which included four exhibits; the site plan, two aerial photos of other tiki huts located within setbacks in Key Haven, and the staff report for a different property recommending approval for a setback variance. The County's response is that it appears that the basis for appeal addresses criteria number five, that granting the variance will not give the applicant any special privilege denied other properties. Staff agrees that the proposed variance is in compliance with item number five. Therefore, addressing item number five as part of the appeal when the variance was denied based on two other criteria is not relevant. Staff's recommendation is that the Planning Commission uphold the original staff determination that the requested variance was not in compliance based on those two criteria.

Commissioner Thomas wanted to clarify that the applicant had a permit showing where the tiki would be located and then put it somewhere else. Ms. Lustberg explained that they had applied for a permit showing it in one location compliant with the setbacks, there was an issue with shoreline open space so instead of addressing the shoreline open space in a different way, they decided to address the shoreline open space by moving the tiki back from the shoreline and more toward the front yard setback. Chair Scarpelli noted that the existing site plan shows the tiki in the front yard setback, and the proposed site plan shows it in the 20-foot rear yard setback. Ms. Lustberg clarified that the applicant had asked that those plans be printed out so he could use them to walk through his explanation.

Mr. Shawn Hudgins with Ms. Abigail Hudson (phonetic), the applicants/owners of the property came to the podium. Mr. Hudson stated he is asking to leave the tiki hut in the location it was in prior to a code case. If he can't do that, he will ask to move it out of the setbacks and ask for relief of removing an additional 162.5 square feet of hardscape that by moving it out of the setback, this is what he will have to go in and do to keep the open space coverage for the 20-foot shoreline setback. What is not portrayed in the appeal denial is the history of why he's here. This started out as a code case for boat lifts, for a man gate, and a tiki hut. He immediately started corrective measures. He had site plans drawn up and pulled permits for all three of the cases. The permit for the boat lifts and the man gate were done and passed. The tiki hut that he was trying to keep in place was kicked back from the building department and he learned of the setbacks, particularly the second front yard setback. Once learning of this he got plans to move the tiki hut out of the setback area, and he was then informed of the shoreline ground coverage, so he took the top of the tiki hut down to try to get the demo permit cleared to clear the code case. From that point on, the permit for moving the tiki hut out of the setback then encroached in the ground coverage issue with the 20-foot shoreline setback. He tried to clear the code case by getting the original tiki hut demoed but it wasn't allowed because he left the poles and concrete pad under the tiki hut. He then informed the inspector that he was going to try to get a variance to keep it in the second front yard setback. From that point on, the ground coverage shoreline setback issue came into play. There was concrete there, so he decided to move 450 square feet of concrete from where the tiki hut can be moved into, and that's not in the appeal denial. After moving the 450 square feet of concrete, he believes the issue is, especially with the two criteria that he failed, that now they're saying he can move it into the space that he removed the concrete and to meet the shoreline space coverage, and he can't wrap his head around it. He removed ground coverage, the tiki hut is going to go there, and now he has to remove more hardscape within the 20-foot setback.

He is familiar with the island of Key Haven. What prompted him to get these variances was going to the two homes on Exhibits A and B, homes that are back to back at the end of a canal, and they both have tiki huts in the exact same location as his. Then going into Exhibit D, which is a variance that was given for a swimming pool, going and looking at criteria two that is in this variance, they define an exceptional hardship, which he read into the record. This is what prompted him to challenge the staff's decision to deny his appeal. Going forward, Ms. Lustberg was very helpful with trying to get this through. He made a lot of corrections. Once he got to the point of submitting the official variance application, he submitted it and got the denial. In the first request for relief of the setbacks he was asking for only the 7.5 feet. Ms. Lustberg then stated the side of the tiki hut needed to be turned and that was his primary side yard setback,

which he if you look to the left side of the home on the survey the west side setback is 9.9 feet or 9 feet 11.5 inches. If the Commission is reluctant about giving out two variances he would be happy to get his concrete grinder and grind the stucco off the wall and building to create a quarter inch on each side, and get it resurveyed to get to ten feet which would turn the 1.2 feet of relief that he's asking for the primary side yard setback to make it a secondary side yard setback which is five feet. Or, he could get scissors and cut the grass off the top of the roof to give him the half inch.

Lastly, this house was purchased in 2017 and there were a lot of existing conditions that don't meet with code, some were there and some he did. They struggled to get into this house and made it by the skin of their teeth. It was damaged from Hurricane Irma. They did a lot of renovations with a permit. Towards the end, his funds were limited and he put the boat lift and the tiki hut in without a permit. He is publicly eating humble pie and apologizes. Moving forward, he has made a pact that with any project moving forward he will definitely seek counsel and approval. So he's asking, understanding the strict codes, he is merely asking to be allowed to do what others have been allowed to do.

Chair Scarpelli asked if there was a setback for Lot 28 as well. Ms. Tolpin responded that that is currently the primary side yard setback. But, by the definition of the code they are required to measure the setbacks to the furthestmost projection of the structure so it would actually be measured to the elevated AC on stand that is attached there. That's the reason that is the secondary side and why the other side is the primary 10-foot side. Ms. Lustberg added that the request on the basis of appeal first asks this be overturned so the tiki can stay in the proposed location; and if not he would request the ability to not comply with shoreline setback requirements; and then he moved on to other options. There is no variance option for shoreline open space so that is not one of the viable options. Chair Scarpelli confirmed that as far as the setback variances, there would be two if it stayed in its current location, to the primary side yard and secondary front yard. Mr. Morris added that this is an appeal so it's really an up or down vote on whether reversible error was committed by Ms. Tolpin. Chair Scarpelli stated that with all of that being said then all of the options offered by the appellant have no bearing. Mr. O'Connor stated that the Commission needed to basically affirm the appeal or take it back to the Planning Director. Mr. Morris added, either affirm or reverse. It's still an opportunity for constructive engagement on what comes next, but in terms of the decision made it's an up or down vote, reverse or not.

Chair Scarpelli asked Mr. Hudgins using the plan that has the existing site plan with where the tiki hut currently is, and then the proposed site plan where the tiki hut goes into the rear yard setback, is that what he is proposing. Mr. Hudgins stated what he would like is to keep the tiki hut in its original location. Chair Scarpelli clarified that that was within the front yard setback and then get a variance for the secondary front yard and the primary side yard, which is what was denied. The other option would be to move it into the proposed site location and tear up 162 square feet of concrete.

Chair Scarpelli then asked for public comment.

Mr. Keith Giacomuzzi, immediate neighbor to the applicant, stated that in his opinion he personally thinks the tiki hut in its original location is perfectly acceptable. He does not see that it harms any of the immediate neighbors or anyone in the vicinity, and moving it would be sort of extraneous and wouldn't really accomplish too much or help anyone else out. For whatever it's worth, that's his opinion.

There was no further public comment. Public comment was closed.

Commissioner Demes asked how much a tiki hut costs to build. Mr. Hudgins responded that it was seven years ago and cost, with the concrete, about \$7,000. Commissioner Demes then asked how much it cost to get all of the engineering work done, as he was just curious. Mr. Hudgins responded that it was in the thousands. To add a human emotional factor into this, they like the location of the tiki hut as they have accumulated massive amounts of vegetation, the orchids are thriving, and they really enjoy it in this location, which is why he's fighting so hard. Commissioner Demes stated that he had spent more time on this item than some of the others that went longer just trying to understand the chronology. What really started this was it was building without a permit and therein lies the problem. He then went over the dates of the process. Mr. O'Connor interjected, to help in the decision making process, by pointing out that subsections (2) and (8), the failure to grant the variance would result in exceptional hardship to the applicant and the variance is the minimum necessary to provide relief to the applicant. It's the Planning Director's decision that those conditions are not present supported by competent and substantial evidence. If it was, then you would affirm. If it is not, then you would reverse.

Chair Scarpelli added that he wishes it was only the front yard setback variance. That primary side yard is the one that bothers him because that's what makes it more than what's necessary. Chair Scarpelli thought a variance for the front yard setback would be the minimum necessary to work with staff. He could get behind that.

Motion: Commissioner Thomas made a motion to affirm and uphold the Planning Director's decision. Commissioner Demes seconded the motion.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, Yes; Commissioner Anderson, Yes; Chair Scarpelli, Yes. Motion passed unanimously.

GROWTH MANAGEMENT COMMENTS

None.

RESOLUTIONS FOR SIGNATURE

None.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 2:15 p.m.